Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Verizon Telephone Companies	)	WC Docket No. 02-237
	)	
Section 63.71 Application to Discontinue	)	
Expanded Interconnection Service Through	)	
Physical Collocation	)	

COMMENTS OF ALLEGIANCE TELECOM, INC., DSLNET COMMUNICATIONS, LLC, AND FOCAL COMMUNICATIONS CORPORATION

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Table of Contents

Summary i

I. THE PROPOSED "DISCONTINUANCE" IS A RUSE TO EVADE COMMISSION JURISDICTION AND RAISE RATES FOR DC POWER FOR EXISTING CUSTOMERS 1

II. THE PROPOSAL TO CHARGE DC POWER FOR FEDERAL COLLOCATION FROM STATE TARIFFS IS UNLAWFUL 4

A The Communications Act Preempts State Regulation of DC Power Charges for Federal Collocation Customers 4

B. Federal Collocation Customers Would Have No Obligation To Pay State DC Power Charges 7

III. THE PROPOSAL TO DISCONTINUE FEDERAL CROSS-CONNECTS VIOLATES THE *COLLOCATION REMAND ORDER* 8

IV. THE TERMS AND CONDITIONS OF THE PROPOSED DISCONTINUANCE ARE UNREASONABLE 9

A. The Proposal Would Greatly Increase Charges for DC Power for Existing Federal Physical Collocation Customers 9

B. The Conversion Option Is Unreasonable 11

V. THE VOLUNTARY NATURE OF THE INITIAL FEDERAL PHYSICAL COLLOCATION OFFERING DOES NOT PERMIT "DISCONTINUANCE" ON UNREASONABLE TERMS AND CONDITIONS 12

VI. THE DISCONTINUANCE IS CONTRARY TO THE PUBLIC INTEREST 14

VII. CONCLUSION 15

Summary

Allegiance Telecom, Inc., DSLnet Communications, LLC, and Focal Communications Corporation are customers of Verizon's physical collocation service that is the subject of this proceeding. These competitive carriers use Verizon's federal physical collocation service either exclusively in the Verizon North or Verizon South region or to a very significant extent. These carriers and other CLECs would be seriously harmed by the 200 percent and more rate increases for DC power that Verizon proposes for its federal physical collocation customers.

In April 2001, Verizon proposed to revise the rates and rate structure for provision of DC power to physical collocation customers offered in its federal tariff pursuant to Sections 201-205 of the Act. These revisions would have established the same rate structure and essentially the same rate level as Verizon charges for DC power under its state physical collocation tariffs. These revisions would have doubled and tripled charges for DC power. Verizon was unable to justify these revisions to the Commission, however, and, after a substantial record was established in the course of a tariff investigation, Verizon withdrew its proposal in order to avoid a finding that the proposed rates were unlawful.

In the present proposal, Verizon proposes to shift charges for DC power for its federal physical collocation customers to its state tariffs, effectively imposing the very charges for DC power that the Commission failed to approve in connection with Verizon's proposal to revise its federal tariffs. Accordingly, the present proposal is no more than a ruse to evade the Commission's authority and to impose 200% and more increases for DC power that the Commission previously investigated and that Verizon withdrew prior to a decision as to the justness and reasonableness of the rates. For this reason alone, the Commission should reject

Verizon's proposal and require that any charges for DC power associated with federal physical collocation be tariffed at the federal level.

Even if otherwise reasonable, the Commission must reject the Application because the proposal to require CLECs to purchase DC power from state tariffs for federal collocation space violates the Commission's exclusive jurisdiction over interstate communications, including all "services ... incidental" thereto. Thus, states have no authority to regulate or set the charges for services offered under Sections 201-205 of the Act, including for DC power for physical collocation. Any attempt by Verizon to collect state tariffed rates for DC power used in federal collocation space would be void because the FCC has jurisdiction over the rates charged for power used in federal collocation arrangements.. While states may, pursuant to Section 251(c)(6) and the Commission's implementing rules, regulate the rates for DC power for physical collocation, they have no authority over matters offered under Sections 201-205. Accordingly, the Commission must deny the application because any charges for DC power for federal collocation space must be tariffed at the federal level. If Verizon wants to revise the rates and rate structure for DC power for federal collocation, it must file a proposed revised federal tariff attempting to do so.

Verizon's proposal to discontinue the offering of federal cross-connects for future customers is unlawful because it flatly violates the *Collocation Remand Order* and the recently issued *Clarification Order* that determined that ILECs must offer cross-connect service pursuant to federal tariffs filed pursuant to Sections 201-205 of the Act. Therefore, Verizon may not discontinue, but must continue to offer, cross-connect service in federal tariffs.

Even if lawful, the Application should be denied because it would establish unreasonable terms and conditions for a discontinuance. As noted, the proposal to shift charges for DC power

to state tariffs, apart from attempting to evade the Commission's jurisdiction, would impose the rates and rate structure that Verizon unsuccessfully attempted to impose last year on its federal customers. Those rates would effectively double or more DC power charges for provision of federal collocation space. Commenters refer the Commission to the record established in connection with Verizon's previous proposal which amply demonstrates the unreasonableness of those charges. Verizon has made no attempt in connection with the present proposal to justify those increased rates, merely hoping that the Commission will ignore Verizon's attempt to evade the Commission's authority and jurisdiction represented by this application. As explained in these comments, other aspects of the proposed discontinuance are unreasonable as well.

For all these reasons, the Application fails to meet the public interest standard for discontinuance under Section 214 of the Act and the Commission's rules.

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ALLEGIANCE TELECOM, INC.,
DSLNET COMMUNICATIONS, LLC,
AND FOCAL COMMUNICATIONS CORPORATION

Allegiance Telecom, Inc., DSLnet Communications, LLC, and Focal Communications Corporation (together "Commenters") submit these comments concerning the above-captioned application ("Application") of the Verizon Telephone Companies ("Verizon") to discontinue provision of physical collocation as part of its federal offering of expanded interconnection service. Commenters are collocated in numerous Verizon central offices in both the Verizon North and Verizon South regions, purchased for the most part out of Verizon's federal tariffs. Commenters will be adversely affected if the Commission grants Verizon's Application to discontinue federally tariffed physical collocation service by being forced to pay significantly higher rates for DC power and being forced to purchase other supporting services out of Verizon's state tariffs. For the reasons stated below, the Commission should deny the Application.

I. THE PROPOSED "DISCONTINUANCE" IS A RUSE TO EVADE COMMISSION JURISDICTION AND RAISE RATES FOR DC POWER FOR EXISTING CUSTOMERS

In April 2001, Verizon filed tariff revisions with the Commission proposing to establish

new rates and rate structures for DC power provided to customers of physical collocation.[1] These tariffs proposed to change the basis for charging for DC power from a "per fused amp" basis to a "per load amp" basis. Under the former approach, charges are based on the rating of the fuses placed on the DC power feeds to the physical collocation space, which is usually 150% or more of the peak load. Under the latter approach, DC power is charged based on the number of amps ordered by the collocator. This proposed change would have brought the rate structure for DC power ordered under the federal tariffs into conformance with Verizon's approach in state tariffs, which also charge based on a per load amp ordered basis.

In its tariff revisions, Verizon also proposed to grossly increase the per amp charges for DC power to essentially the same levels as charged under its state tariffs.[2] As noted by the Commission, taken together, Verizon's proposals would have increased charges for DC power under federal tariffs approximately, 293%, 236%, and 132% in New York/Connecticut, the remainder of the Verizon North region, and Verizon South region, respectively.[3] The Commission suspended the proposed tariff revisions for one day, and allowed the revisions to become effective, subject to investigation.[4] The Commission subsequently issued a comprehensive *Designation Order* specifying numerous issues that Verizon was required to

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1 Bell Atlantic Telephone Company Transmittal No. 1373, filed April 11, 2001, revising Tariff FCC No. 1; Bell Atlantic Telephone Company Transmittal No. 1374 filed April 12, 2001, revising Tariff FCC No. 11.

2 Verizon proposed to charge $25.32 per load amp in New York and Connecticut, $16.61 per load in the rest of the Verizon North States, and $20.23 per load amp in Verizon South. *Bell Atlantic Telephone Companies*, Order Designating Issues for Investigation, CC Docket No. 01-140, DA 01-1525, released June 26, 2001, para. 8 ("*Designation Order*").

3 *Designation Order* at para. 8.

4 *Bell Atlantic Telephone Companies, Revisions to Tariffs FCC Nos. 1 and 11*, Order, DA 01-1077, Com. Carr. Bur. Rel. April 25, 2001).

address in order to justify the revisions.[5] A substantial record was established during the course of the investigation. However, the Commission never issued an order addressing the validity of the proposed revisions because Verizon withdrew its proposals the day before the statutory deadline for completing the investigation, and reinstated the previous rates and rate structure. Rather than risk the proposed revisions being found unlawful and a prescription of rates, Verizon withdrew its unlawful proposal and reinstated the previous rates and rate structure. The Commission then peremptorily terminated the investigation.[6]

By the Application, Verizon seeks to achieve the result of its previous proposals by attempting to shift DC power charges for existing customers from federal to state tariffs. These state tariffs would impose comparable rates and the same rate structure that Verizon was not able to justify in the investigation previously before the Commission. Thus, Verizon's state tariff rates would result in DC power charges for its federal physical collocation customers of the same magnitude that Verizon was not able to justify when proposed to the Commission last year.

As explained below, Verizon may not lawfully impose state tariffed charges on customers for services provided in connection with a federally tariffed service because, under the Act, the Commission has exclusive jurisdiction over interstate communications "including all instrumentalities, facilities, apparatus, and services ... incidental to" it.[7] Thus, the Commission may reject Verizon's proposal out of hand. However, the Commission should be outraged by Verizon's blatant attempt to evade the Commission's authority and jurisdiction to assure that the rates for interstate communications are just and reasonable. The fact that Verizon was unable to

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5 *Designation Order, supra.*

6 *Bell Atlantic Telephone Companies, Revisions to Tariffs FCC Nos. 1 and 11*, Order Terminating Investigation, CC Docket No. 01-140, FCC 01-278, released September 26, 2001.

7 47 U.S.C. Section 153(52).

justify to this Commission its plan to impose these very same rate levels and rate structures on customers of federally tariffed physical collocation service makes its current proposal particularly egregious. With respect to the current proposal, the Commission should reject Verizon's attempt to evade Commission jurisdiction over its rates for federal physical collocation service. The Commission should require Verizon to file with, and justify to, the Commission any proposed changes for any of the terms and conditions of federal physical collocation service for existing customers for as long as such service continues.

II. THE PROPOSAL TO REQUIRE FEDERAL COLLOCATORS TO PAY DC POWER RATES PURSUANT TO STATE TARIFFS IS UNLAWFUL

A. The Communications Act Preempts State Regulation of DC Power Charges for Federal Collocation Customers

Under Verizon's proposal, DC power purchased by current customers of Verizon's federal physical collocation service would be subject to state regulation and charged out of state tariffs. This proposal is unlawful because states have no authority to regulate charges for communications services offered under Sections 201-205 of the Communications Act.

Under the Act, the Commission has authority to regulate interstate "wire communication" including "services ...incidental" thereto.[8] In this connection, the Commission has already determined that physical collocation is incidental to interstate expanded interconnection service, and, therefore, is itself subject to regulation as an interstate communications service. The Commission has ruled that:

> [W]e have legal authority to regulate expanded interconnection service provided through a physical collocation arrangement because physical collocation is an interstate "communications service" provided on a common carrier basis. Section 3 of the Communications Act defines "communication" by wire or radio to include 'all instrumentalities, facilities, apparatus, and services . . . incidental to' the transmission of signals by wire or radio. We find that the provision of central

[8] 47 U.S.C. Section 153(52).

> office space for physical collocation is incidental to communications, thus rendering it a communications service under Section 3 of the Communications Act, and that provision of such space is a common carrier service. Offerings are incidental to communications and therefore are communications themselves, if they are an integral part of, or inseparable from, transmission of communications. Physical collocation service is an integral part of a communications service because use of central office space is necessary to allow CAPs to interconnect their communications services with the LECs' networks.[9]

DC power, in turn, is essential to use of collocation space and of provision of communications transmission service. Therefore, the Commission also has jurisdiction over DC power provided to physical collocation space, which is obvious, in any event, from the fact that DC power charges for physical collocation are currently tariffed at the Commission in Verizon's FCC Tariffs Nos. 1 and 11.

Moreover, the Commission's jurisdiction to regulate interstate communications is exclusive, preempting state regulation in an area of interstate communications even if the state regulation is consistent with federal regulation. The Communications Act, grants to the Commission jurisdiction over "all interstate and foreign communication by wire or radio,"[10] while generally reserving to the states jurisdiction over "intrastate communications by wire or radio of any carrier."[11] Under this regulatory framework, the Commission has plenary and comprehensive jurisdiction over interstate and foreign communications, the regulation of which is entrusted to the Commission.[12] The Commission's jurisdiction over interstate and foreign

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[9] *In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport,* CC Docket No. 93-162, Second Report and Order, FCC 97-208, ¶ 20 (1997).

[10] 47 U.S.C. Section 152(a).

[11] 47 U.S.C. Section 152(b)(1). Even under Section 2(b)(1), the Commission may preempt state regulation of intrastate communications when state decisions regarding intrastate communications would negate, thwart, or impede the exercise of lawful federal authority over interstate communications. *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 (1986); *Public Utility Commission of Texas v. FCC*, 886 F. 2d 1325, 1331 (D.C. Cir. 1989); *California v. FCC*, 905, F. 2d 1217 (9th Cir. 1990).

[12] Interstate and foreign communications are "totally entrusted to the FCC." *National Ass'n of Regulatory Util. Com'rs v. FCC*, 746 F. 2d 1492, 1501 (D.C. Cir. 1984). The Commission has "plenary and comprehensive

communications is exclusive of state authority,[13] Congress having deprived the states of authority to regulate the rates or other terms and conditions under which interstate communications service may be offered in a state.[14]

In Operator Service Providers of America, the Commission found that the Communications Act vested exclusive authority in the Commission to regulate interstate communications, preempting as a matter of law Tennessee's attempt to regulate interstate operator services, even if that regulation were consistent with federal rules and goals.[15] Similarly, states have no authority to regulate any of the terms and conditions of federal physical collocation service, including DC power. Therefore, Verizon's proposal that states will regulate the terms and conditions of provision of DC power and other supplementary services to current federal physical collocation customers violates the fundamental determination of Congress in the Communications Act that the Commission shall regulate interstate communications and that the states may not do so.

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regulatory jurisdiction over interstate and foreign communications," *Telerent Leasing Corp. et al.*, 45 FCC 2d 204, 217 (1974), *aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F. 2d 787 (4th Cir.), *cert. Denied*, 429 U.S. 1027 (1976). "Congress vested in [the FCC] plenary jurisdiction to regulate the instrumentalities and facilities used in the transmission and reception of interstate communications." *Orth-O-Vision, Inc. Petition for Declaratory*, 69 FCC 2d 657, 666 (1978).

[13] "[T]he States do not have jurisdiction over interstate communications," *AT&T and the Associated Bell System Cos. Interconnection With Specialized Carriers in Furnishing Interstate Foreign Exchange (FX) Service in Common Control Switching Arrangements (CCSA)*, 56 FCC 2d 14, 20 (1975), *aff'd, California v. FCC*, 567 F. 2d 84 (D.C. Cir. 1977), *cert. Denied*, 434 U.S. 1010 (1978). '[T]he effect of the [Communications Act] is to bring all interstate communications under [its] coverage to the exclusion of local statutes or decisions." *Vaigneur v. Western Union Telegraph Co.*, 34 F. Supp 92, 93 (E. D. Tenn. 1940). "It is beyond dispute that interstate communications is normally outside the reach of state commissions and within the exclusive jurisdiction of the FCC." *AT&T Communications v. Public Service Comm'n*, 625 F. Supp 1204, 1208 (D. Wyo. 1985).

[14] Where Congress has given this Commission exclusive authority over interstate and foreign communications, the Commission need not demonstrate that "state regulation of interstate communications would impose some burden upon interstate commerce or would frustrate some particular policy goal of the Congress or of this Commission in order to preclude a state commission from regulating the rates for an interstate communications service." *Chesapeake and Potomac Telephone Company of Maryland*, 2 FCC Rcd 3528 (1987). See also *State Corp. Com'n of Kan. v. FCC*, 787 F. 2d 1421 (10th Cir. 1986).

[15] *Operator Service Providers of America*, Memorandum Opinion and Order, 6 FCC Rcd 4475 (1991).

This analysis is no less valid notwithstanding that states, through the negotiation and arbitration process of Sections 251 and 252, may supervise the terms and conditions of physical collocation used for both intrastate and interstate communications. Thus, the Commission has already determined that Sections 251 and 252 do not limit the Commission's authority concerning a BOC's offering pursuant to Sections 201-205 of the Act of expanded interconnection through physical collocation.[16]

Similarly, The Commission has stated that if an interconnector chooses to take service pursuant to an interstate expanded interconnection tariff, the interconnector's collocation arrangement is governed by the standards of the Section 201-205 tariffing process, and not by the standards in section 251.[17] In the same vein, the Commission has reiterated that federal tariffing requirements are fully applicable to federal cross-connect service, even though ILECs must also offer cross-connect service under Section 251(c)(6).[18]

Accordingly, Verizon's hare-brained scheme to apply state requirements to existing customers of federal collocation service requires denial of the Application, in addition to all the other reasons stated herein.

B. Federal Collocation Customers Would Have No Obligation To Pay State DC Power Charges

As discussed, the Communications Act "completely occupies the field of interstate

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[16] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 (1996) at para. 610.

[17] *In the Matter of New York Telephone Company and New England Telephone and Telegraph Company*, Memorandum Opinion and Order, DA 97-524, ¶ 16 (1997).

[18] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration of Fourth Report and Order and Fifth Report and Order, FCC 02-234, ¶ 9 (September 4, 2002)("*Cross-Connect Clarification Order*") at para. 9.

communications, thereby preempting state law."[19] Thus, in seeking to exact payment for interstate services, a carrier must establish the applicability and validity of the charge in a tariff filed at the Commission.[20] In fact, only a few days ago the Commission reiterated that Section 203(a) of the Act requires "that all services subject to the Commission's jurisdiction under Section 201 be federally tariffed."[21] The obligation of a customer to pay for interstate telephone service grows out of, and depends on, the Communication Act.[22] Therefore, an attempt by Verizon to impose state charges on interstate services would be void since those charges, by virtue of the Commission's exclusive jurisdiction over interstate communications and the federal tariffing requirement, may not be validly imposed on interstate services. Accordingly, customers of federal collocation service would have no obligation to pay any such state charges.

III. THE PROPOSAL TO DISCONTINUE FEDERAL CROSS-CONNECTS VIOLATES THE *COLLOCATION REMAND ORDER*

In the *Collocation Remand Order*, the Commission determined that ILECs must make a federal offering of cross-connect service pursuant to Section 201 of the Act.[23] Incredibly, in its Application, Verizon proposes that its current federal customers will have federal cross-connect services "grandfathered" and will continue to be billed for them from federal tariffs,[24] but that new cross-connects must be ordered out of state tariffs.[25] In other words, Verizon proposes to

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19 *MCI Telecommunications Company v. O'Brien Marketing, Inc.*, 913 F.Supp. 1536, 1540 (S.D.Fla. 1995).

20 *See, MCI Telecommunications Corporation v. Garden State Investment Corporation*, 981 F.2d 385, 387 (8th Cir. 1992).

21 *Cross-Connect Clarification Order* at para. 9.

22 *Ivy Broadcasting Company v. American Telephone and Telegraph Company*, 391 F.2d 486, 494 (2nd Cir. 1968).

23 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, CC Docket No. 98-147, FCC 01-204, released August 8, 2001, at paras. 62-78 ("*Collocation Remand Order*").

24 Application at 4.

25 *Id.* at 5.

discontinue federal cross-connect service in direct violation of the *Collocation Remand Order* and implementing rules.

Moreover, since the filing of the Application, the Commission has further determined that the federal cross-connect offering must be included in federal tariffs. The Commission found, as noted above, that Section 203(a) mandates "that all services subject to the Commission's jurisdiction under Section 201 be federally tariffed."[26] Accordingly, Verizon's proposal to "grandfather" federal cross-connect service for existing customers and discontinue the federal offering for any new federal cross-connects is flatly unlawful. Instead, Verizon must continue to offer cross-connect service in federal tariffs for both current customers and for new arrangements until the Commission changes the rules. The Commission must deny the Application in light of Verizon's unlawful proposal to discontinue a federal offering of cross-connect service.

IV. THE TERMS AND CONDITIONS OF THE PROPOSED DISCONTINUANCE ARE UNREASONABLE

A. The Proposal Would Greatly Increase Charges for DC Power for Existing Federal Physical Collocation Customers

Under Verizon's proposal, existing customers of Verizon's physical collocation service could continue to receive space and cross-connect service from the federal tariff, but all other supporting services would be provided under state tariffs.[27] As noted, this would alter the rate structure and rate level for DC power such that existing customers would experience very large increases in charges for DC power. For example, under Verizon's current FCC Tariff No. 11, Commenters pay $6.44 per amp for DC power in New York and $4.88 per amp in Massachussetts. Under Verizon's state tariff in New York, Commenters would be charged

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[26] *Cross-Connect Clarification Order* at para. 9.

[27] Application at 5.

$19.64 per amp and $20.24 per amp in Massachusetts. This represents an approximate increase of $203% in New York and 276% in Massachusetts. The increase would be approximately 205% in Verizon South states. For CLECs such as Commenters that have many collocation arrangements throughout Verizon territory, the present proposal would result in several million dollars per year in increased DC power charges.

Commenters cannot stress strongly enough that these proposed increases for customers of collocation service pursuant to Verizon's federal tariffs are unreasonable in light of the fact that Verizon was given an extensive opportunity to justify comparable proposed DC power rate increases and was unable to do so. The *Designation Order* observed that there was a "significant potential for Verizon's methodology to yield inflated estimates of the actual monthly costs of providing DC power to collocated competitors ..."[28] and listed numerous issues that Verizon was required to address in order to justify its proposed rates and rate structure for provision of DC power to physical collocation customers under its federal tariffs. Commenters refer the Commission to the record of that proceeding which is best characterized as reflecting an inability or unwillingness of Verizon to submit requested supporting information and abandonment of its initial theories for justifying the very large proposed rate increases. Thus, for example, Verizon stated that it was unable to provide sub-components of its input prices,[29] quantification of certain aspects of prior cost studies,[30] or the results of an alternative methodology for setting DC power rates,[31] and that it was no longer going to pursue the theory that inflation justified the proposed

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28 *Designation Order* at para. 7.

29 Verizon Direct Case, Exhibit A at 3.

30 *Id.* Exhibit B at 1.

31 *Id.* Exhibit E at 3.

increases.[32] In short, Verizon totally failed to support or justify the proposed rate increases that it now seeks to impose on existing customers by the unlawful stratagem of applying state tariffed charges to customers of federally tariffed collocation services.

Commenters also strongly emphasize that these proposed increases would be very harmful to Commenters and for competition in the Verizon region. Commenters use federal physical collocation to a far greater degree than collocation services offered in state tariffs. The doubling and more of rates for DC power, which is the largest component of charges for physical collocation, other than for space, would abruptly impose large and uncontemplated increases in the cost of doing business in Verizon territory. These increases would seriously hamper Commenters' ability to provide competitive services.

Given that Verizon was not able recently to demonstrate to this Commission that rate increases of this magnitude for DC power were just and reasonable, those charges are presumptively unreasonable as applied to customers of federally tariffed interstate physical collocation service. For this reason, even apart from the unlawful approach to imposing these charges, Verizon's proposal to apply them to federal customers is unreasonable and warrants denial of the Application.

B. The Conversion Option Is Unreasonable

As stated, Verizon's Application is a ruse to impose on its existing federal physical collocation customers the rate increases that it was unable previously to justify to the Commission. Verizon's proposal to permit existing customers to convert space and cross-connect charges to state tariffs is no more than an elaboration of this scheme. While Verizon proposes that customers in Verizon North territory would receive a credit for space preparation

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[32] *Id.* Exhibit A at 3.

charges, the credits are trivial in comparison to the whopping increases in DC power to which customers would be subject in any event under the Application. In addition to being too small, any such credits should not be disbursed over nine years, but should take the form of refunds of all previously paid non-recurring charges. Since CLECs were required to pay these nonrecurring space preparation charges before getting access to their collocation space, they are entitled to lump sum refunds and should not be required to wait nine years to recoup their investments especially when they may very well be forced to pay higher recurring charges under state tariffs than they are paying under federal tariffs. The proposed credits should apply in the Verizon South region as well. Far from being a genuinely attractive feature of the proposal that could ameliorate the rate increases that are its true aim, the conversion option is mere window dressing that does nothing to change the fact that the conversion option is a total non-starter from the CLEC perspective. If Verizon wanted to make the conversion option genuinely attractive it should provide for continuation of federal DC power charges in addition to refunds of space preparation charges. Accordingly, the proposed credits do not cure the otherwise unlawful and unreasonable character of Verizon's proposal.

V. THE VOLUNTARY NATURE OF THE INITIAL FEDERAL PHYSICAL COLLOCATION OFFERING DOES NOT PERMIT "DISCONTINUANCE" ON UNREASONABLE TERMS AND CONDITIONS

The fact that the Commission's rules permit, but do not require, Verizon to offer physical collocation as part of its federal expanded interconnection offering does not permit Verizon to abruptly withdraw its offering of physical collocation in whole or in part, or to impose unreasonable terms and conditions on any discontinuance or continuation of service. Having voluntarily chosen to invoke the Commission's jurisdiction for its offering of physical collocation, any discontinuance or continuation of this service is governed by Sections 201-205

of the Act as well as the overall public interest standard of Section 214. Under the latter standard, the Commission may require Verizon to continue offering physical collocation for an extended period of time if required in the public interest. In this regard, Verizon's offering of physical location is no different than any of the other myriad interstate services that it and other ILECs have chosen to offer, but which are not specifically required to be offered under the Commission's rules. CLECs have relied on the continuation of the availability of federally tariffed collocation service, have already paid the space preparation charges, and would be substantially harmed by withdrawal of any aspect of it.

In fact, the Commission has found that a voluntary offering of expanded interconnection through physical collocation will be fully subject to the Act. The Commission rejected the notion that because ILECs may be making federal physical collocation as a "voluntary service offering" that it was subject to lesser regulation.[33] The Commission noted that the voluntary physical collocation offering is still subject to full regulation by the Commission as a communications common carrier service.[34] The Commission noted that "because we envision, under the new collocation policy, that some local telephone companies may voluntarily provide physical collocation as a regulated common carrier services, we are also reaffirming many of our rules relating to the rates, terms and conditions of physical collocation offerings."[35] The Commission has held that if a LEC opts to offer expanded interconnection through physical collocation, the service is "subject to full regulation by the Commission as a communications

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33 *In the Matter of Investigation of Ameritech's New Expanded Interconnection Offerings,* CC Docket No. 96-185, Order, DA 96-1474, ¶ 11 (1996).

34 *Id.*

35 *Id.*

common carrier service."[36]

Further, the Commission has observed that requiring prior approval for a discontinuance of service is a means to protect against the "unreasonable termination or reduction of service to customers."[37] The standards for discontinuance apply even when the customer is another carrier as opposed to an end user.[38]

Accordingly, the Commission must assure that Verizon's provision of physical collocation to its existing customers, for as long as it continues, and that any discontinuance, if permitted, are on reasonable terms and conditions as required by Sections 201-205, and Section 214, notwithstanding that Verizon was not required to offer federal physical collocation in the first place.

VI. THE DISCONTINUANCE IS CONTRARY TO THE PUBLIC INTEREST

Under Section 214 of the Act the Commission may grant an application for discontinuance if "neither the present or future public convenience and necessity will be adversely affected thereby."[39] Commenters submit that the attempt to impose unacceptable DC power charges through evasion of the Commission's exclusive jurisdiction over interstate communications, the enormous increased charges for DC power, the unlawful scheme to impose

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[36] *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, FCC 94-190, ¶ 31 (1994).

[37] *In the Matter of 2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules,* IB Docket No. 00-231, Notice of Proposed Rulemaking, FCC 00-407, ¶ 28 (2000).

[38] *See Application of Pathnet, Inc. and Pathnet Operating, Inc. to Discontinue Domestic Telecommunications Services Not Automatically Granted*, Public Notice, NSD File No. W-P-D-503, DA 01-1869 (2001).

[39] 47 U.S.C. Section 214(a).

state charges on federal collocation customers, and the direct violations of the Commission's orders concerning cross-connects require rejection of the application as contrary to the public interest.

VII. CONCLUSION

Accordingly, the Commission should deny the above-captioned Application.

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